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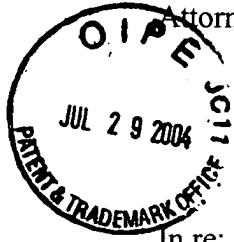
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Attorney's Docket No. 045600/274147

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Carozzi et al. Confirmation No.: 2147
Appl. No.: 10/781,979
Filed: February 19, 2004
For: AXMI-008, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition To Grant Filing Date And To Refund Petition Fee

As set forth in MPEP §506.02, Applicant hereby petitions to grant the proper filing date of February 19, 2004 rather than February 20, 2004 for the above-identified patent application. The following is enclosed as evidence of February 19, 2004 being the correct filing date under 37 CFR § 1.10:

1. A copy of the Cover Sheet for the Application showing the Express Mail Number;
2. A copy of the Express Mail Receipt marked by the United States Post Office as being mailed on February 19, 2004; and
3. A copy of our return post card from the United States Patent Office showing that Applicant was improperly given the filing date of February 20, 2004 instead of February 19, 2004.

There is no error on the part of Applicant. Accordingly, Applicant respectfully requests the granting of February 19, 2004 as the filing date.

A check in the amount of \$130.00 in payment of the petition fee as set forth in 37 CFR §1.17(i) is enclosed herewith. Any additional fee may be charged or any overpayment credited

07/30/2004 HALI11 00000017 10781979

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In re: Carozzi et al.
Appl. No.: 10/781,979
Filing Date: February 19, 2004
Page 2

to our Deposit Account No. 16-0605. Because no defect existed, however, Applicant also respectfully requests refund of the petition fee.

Respectfully submitted,

Karen M Morse

Karen M. Morse
Registration No. 54,324

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 27, 2004

Nora C Martinez

Nora C. Martinez

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Atty. Dkt. No. 045600/274147

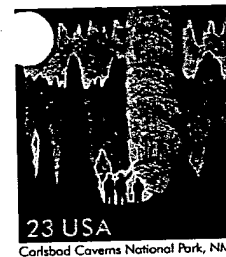
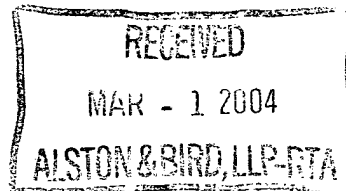
Kindly acknowledge receipt of the accompanying UTILITY PATENT
APPLICATION with Application Transmittal Cover Sheet for: Inventor(s):
Carozzi *et al.*

Title of Invention: AXMI-008, A DELTA-ENDOTOXIN GENE AND METHODS
FOR ITS USE

Pages of Spec. (including claims and abstract) 51; No. of Claims 25
No. of Drawing Sheets 5; Other Documents: Statement in Support of Filing a
Sequence Listing (1 pg.); Sequence Listing (56 pgs.); Computer Readable File (1
diskette); Application Data Sheet (5 pgs.)

Check(s) Enclosed
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Muñoz/KMM, ALSTON & BIRD LLP

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UTILITY PATENT APPLICATION TRANSMITTAL <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small>	Attorney Docket No. 045600/274147
	First Inventor Carozzi <i>et al.</i>
	Title AXMI-008, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE
	Express Mail Label No. EV387067103US

ADDRESS TO: MAIL STOP PATENT APPLICATION
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COPY

Transmitted herewith for filing in the United States Patent Office is a patent application for:

Inventors: Nadine Carozzi
Tracy Hargies
Michael G. Koziel
Nicholas B. Duck
Brian Carr



Assignee of this invention is Athenix Corporation

- ☒ The Filing Fee has been calculated as shown below:
- ☒ Applicant claims Small Entity Status. See 37 CFR 1.27.

	No. Filed	No. Extra	Small Entity Rate	Fee 1	Large Entity Rate	Fee
BASIC FEE				\$ 385		\$ 0
TOTAL CLAIMS:	25 - 20 =	5	X 9 =	\$ 45	x 18 =	\$ 0
INDEP CLAIMS:	4 - 3 =	1	X 43 =	\$ 43	x 86 =	\$ 0
<input type="checkbox"/> MULTIPLE DEPENDENT CLAIMS PRESENTED				+145 =		\$ +290 =
*If the difference in Column 1 is less than zero, enter "0" in Column 2.			TOTAL	\$473	TOTAL	\$

The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Acct. No.

- ☐ Fees required under 37 CFR 1.16 (National filing fees).
- ☐ Fees required under 37 CFR 1.17 (National application processing fees) including any extension of time fees under 37 CFR § 1.136(a) that are required for consideration of papers filed during prosecution.

☐ A check in the amount of \$ for the filing fee is enclosed.

☒ The above filing fee will be paid along with Applicant(s) Response to the Notice to File Missing Parts.

3. ☒ Specification; Total Pages 51

4. ☒ 5 Sheets of Drawing(s) (35 USC 113)

5. ☐ Declaration and Power of Attorney; [Total Pages]

- ☐ Newly executed (original or copy)
- ☐ Copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 18 completed)
- ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) & 1.33(b).

6. ☒ Application D. sheet. See 37 CFR 1.76
7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
- a. ☒ Computer Readable Copy (CRF)
- b. ☐ Request for Transfer of Computer Readable Form of Sequence Listing under 37 CFR § 1.821(e) and MPEP 2422.05 (must be compliant with new rules)
- c. ☒ Specification Sequence Listing on:
- i. ☐ CD-ROM or CD-R (2 copies); or
- ii. ☒ Paper (56 Pages)
- d. ☒ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s) (including a check for the \$40.00 fee)
10. ☐ 37 CFR 3.73(b) Statement (*when there is an assignee*); ☐ Power of Attorney
11. ☐ English Translation Document (*if applicable*)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449; ___ Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) (*Should be specifically itemized*)
15. ☐ Certified Copy of Priority Document(s) (*if foreign priority is claimed*)
- ☐ Foreign Priority is claimed as Application No. , filed
16. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i).
Applicant must attach form PTO/SB35 or its equivalent.
17. ☐ Request for Early Publication Under 37 CFR § 1.219. Fee of \$300.00 is enclosed.
18. **If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:**
- ☐ Continuation ☐ Divisional ☐ Continuation in Part (CIP)

of prior Application No: ___; Filed

Prior Application Information: Examiner

Group/Art Unit:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. **CORRESPONDENCE ADDRESS** **CUSTOMER NUMBER 00826**

Signature: Karen M. Morse

Attorney/Agent of Record: Karen M. Morse

Attorney/Agent Registration No. 54,324

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Date of Deposit February 19, 2004

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Marilyn Muñoz
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